IN THE HIGH COURT OF JUDICATURE AT BOMBAY

CIVIL APPELLATE JURISDICTION

Writ petition NO. 3334 of 2005

Kirit Chandrakant Dhruv .. ... Petitioner

vs.

Union of India and ors. . ... Respondents

Shri S. N. Kantawala i/b. Yogesh Rohira for Petitioners
Mr. H. V. Mehta with Mr. Y. R. Mishra for Respondents.

CORAM: **S. RADHAKRISHNAN**
AND
A. S. AGUIAR JJ.

Date: 16/6/2005

P.C.

1. Heard learned counsel for the Petitioner and learned counsel for the Respondent.

Rule. Rule made returnable forthwith.

Learned counsel for the Respondent waives service. By consent taken up for hearing.

2. By this petition the Petitioner is challenging the order dated 29th April 2005 passed by the Settlement Commission, Additional Bench, Customs and Central Excise, Mumbai. We have perused the order

dated 15th April 2005 passed by the learned Single Judge of this court sitting on the Criminal Jurisdiction in Criminal Application No. 1348 of 2005, wherein it is clearly mentioned that the matter is notified for hearing on 23rd June 2005 before the Settlement Commission and the learned Judge has also adjourned the matter to 24th June 2005, so as to enable the settlement proceedings to be completed on 23rd June 2005.

3. Shri Kantawala for the Petitioner strongly contends that the Respondent had deliberately got the above matter preponed before the Settlement Commission and got the date fixed as 25th April 2005 knowing fully well that on 25th April 2005 the Settlement Commission would not be able to hear the matter on merits as the matter would be premature since 180 days had not expired. In this behalf there is no dispute that 180 days would expire on 19th June 2005 and thereafter only the Settlement Commission will have jurisdiction to entertain the above matter and pass order on merits.

4. Shri Mehta learned counsel on behalf of the Respondent, on instructions , states that his officer was fully aware that if the matter was heard before 25th June 2005 the matter would be rendered

infructuous and the Settlement Commission will dismiss the matter. It appears that the Respondents had deliberately got the matter pre-poned. The perusal of the order and also the application filed on behalf of the Petitioner dated 25th April 2005 clearly indicates that the Petitioner had sought an adjournment on the grounds that 180 days were not over and that only after 19th June 2005, the Settlement Commission would be able to hear the matter on merits and also in view of the summer vacation the learned counsel for the Petitioner was not in Mumbai. Inspite of the same the Respondents were bent upon proceeding with the matter and the matter was dismissed solely on the ground that since 180 days were not over the application was teated as premature. The Commissioner also observed that this order will not be a bar for the applicant to approach the Settlement Commission in future. This is explicit in paragraph 4 of the said order.

5. Mr. Mehta learned counsel for Respondent contended that the learned Single Judge sitting on the Criminal Appellate jurisdiction restrained the Respondent from arresting the Petitioner till 24th June 2005, hence the Respondents had got the above proceedings preponed.

6. We find the conduct of the Respondents highly unbecoming and smacks of malafides. Under the aforesaid facts and circumstances to enable the Petitioner to have a fair opportunity of being heard before the Settlement Commission we quash and set aside the impugned order dated 25th April 2005 and remand back the matter before the Settlement Commission to be heard on 23rd June 2005. Shri Mehta states that his clients will remain present on the same day and the Petitioner shall also remain present on the said date with his counsel. With the above directions the Petition stands remanded back and disposed of accordingly.
7. Parties and Settlement Commission to act on a true copy of this order duly authenticated by the Court Associate.

S. RADHAKRISHNAN J.

A. S. AGUIAR J.